

STATE OF MICHIGAN
COURT OF APPEALS

CADENCE INNOVATIONS, INC., and GRAND
BLANC MACHINERY CENTERS, LLC,

UNPUBLISHED
March 25, 2014

Petitioners-Appellants,

V

No. 313084
Tax Tribunal
LC No. 00-368604

GRAND BLANC TOWNSHIP,

Respondent-Appellee.

Before: RONAYNE KRAUSE, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Petitioners, Cadence Innovations, Inc. and Grand Blanc Machinery Centers, LLC (the property owners), appeal as of right the judgment of the Tax Tribunal establishing the true cash value of real property located on North Holly Road in Grand Blanc Township (the property) for tax years 2009, 2010, and 2011. We affirm.

I. FACTS

A. BACKGROUND FACTS

The property is an industrial building. Cadence Innovations closed the plant on the property in the fall of 2006, and filed for bankruptcy in 2008. The parties stipulated that the property suffered from deferred maintenance.

B. CONDITION OF THE PROPERTY

Dana Leavitt is the Senior Vice President of Operations for the Trust of Cadence Innovations, which was formed to liquidate Cadence Innovations's assets. Robert Silverman, who eventually purchased the property, testified that the property's large machinery was sold in 2006. Leavitt testified that he visited the property in 2007 and discovered that it had various problems, including a leaky roof, black mold, and overall disrepair. Leavitt testified that, in August and September 2010, thieves damaged the copper work for the electrical and plumbing systems.

The property was listed for sale at \$6,900,000 in 2006, \$4,950,000 in January 2009, and \$1,975,000 in November 2009. Silverman testified that he visited the property in 2009. It

appeared neglected and in overall disrepair, and he observed that the roof, doorways, and truck wells were damaged when machinery and scaffolds were removed. In November 2009, Silverman bid \$420,000 at an auction to purchase the property, but the bid was deemed unacceptable.

Silverman testified that he visited the property several times in 2010, and that the lack of maintenance had caused roof leaks and compromised the roof's integrity. In January 2011, Silverman purchased the property for \$384,198.92 for New Venture Real Estate Holdings, LLC, which then deeded the property to Grand Blanc Machinery.

Brian Kirksey, a certified real estate appraiser, testified that he inspected the property on December 2011 and observed significant disrepair and deferred maintenance. Kirksey based his estimate of the property's value in part on Thomas Kemp's estimated cost of repairs, which totaled \$1.68 to \$1.69 million dollars. Kirksey estimated the property's value as follows:

<u>Year</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
True Cash Value	\$610,810	\$410,800	\$610,800

Kevin Groves, a certified real estate appraiser, appraised the property for Grand Blanc Township. Groves testified that he used comparable sales and income based approaches, which he then weighed to determine the property's value. Groves estimated the property's value as follows:

<u>Year</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
True Cash Value	\$5,525,000	\$4,997,000	\$4,577,000

C. THE TRIBUNAL'S ORIGINAL OPINION

Concerning the condition of the property in tax years 2009 and 2010, the Tax Tribunal opined that the property's condition included roof leaks, black mold, and stripped electrical and plumbing. However, the Tax Tribunal found that neither party presented evidence of the actual condition of the property on the tax dates at issue.

The Tax Tribunal found that the building's roof had holes in it, but had no integral parts missing as of December 31, 2008. It thus found that the property was vacant but functional. The Tax Tribunal found that this contradicted the property owners' appraisal for that year, which deducted \$1,689,200 for refurbishment costs. The Tax Tribunal found that the property was vandalized and without electricity or an alarm system as of December 31, 2010. It thus found that the deferred maintenance had escalated to "required repairs."

The Tax Tribunal specifically discounted Kirksey's appraisal, which deducted deferred maintenance for all three years, because there was no evidence that the property required the same repairs for all three years. The Tax Tribunal found that the property's listing price of \$4,950,000 in January 2009 discredited Kirksey's deduction of \$1,684,200 for deferred

maintenance for that year. The Tax Tribunal concluded that the property owners had not proved that a specific deferred maintenance deduction was appropriate for the 2009 and 2010 tax years.

Considering Groves's appraisal, the Tax Tribunal found that it was inappropriate to give his income approach any weight. The Tax Tribunal found that Groves's comparable sales "[look] into consideration any maintenance issues that the subject may have . . .," and that "the lower end range of Groves'[s] adjusted sale prices are conservative." The Tax Tribunal then used Groves's comparable sales to arrive at a true cash value for the property for tax years 2009 and 2010. The Tax Tribunal ultimately found that the property's true cash value was as follows:

<u>Year</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
True Cash Value	\$4,950,000	\$3,450,000	\$1,940,000

D. THE TRIBUNAL'S OPINION ON RECONSIDERATION

The property owners moved for reconsideration, asserting that the Tax Tribunal failed to adjust the property's true cash value for tax years 2009 and 2010 to account for deferred maintenance. The Tax Tribunal denied the property owners' motion.

The Tax Tribunal stated that it had considered the property's deferred maintenance. However, it found that the property owners did not demonstrate specific maintenance conditions for 2009 and 2010, and thus property owners' proposed "cost to cure" method was not a reliable means by which it could reduce the property's value for those tax years to account for the deferred maintenance.

The Tax Tribunal then explained that it therefore considered the property's condition and deferred maintenance as it affected the property's market value. The Tax Tribunal stated that it accounted for the property's condition by giving more weight to the lower end sales comparison, and thus it had accounted for the property's deferred maintenance in 2009 and 2010.

II. THE PROPERTY'S TRUE CASH VALUE

A. STANDARD OF REVIEW

This Court's review of a decision by the Tax Tribunal is limited.¹ We must accept the Tax Tribunal's factual findings if "competent, material, and substantial evidence on the whole

¹ *Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).

record” supports them.² Substantial evidence supports the Tax Tribunal’s findings if a reasonable person would accept the evidence as sufficient to support its conclusion.³

B. LEGAL STANDARDS

The Michigan Constitution provides that true cash value is necessary to determine a property’s proper tax.⁴ The Legislature has defined “true cash value” as “the usual selling price . . . that could be attained for the property at a private sale. . . .”⁵ The petitioner has the burden to establish the property’s true cash value.⁶

Even if the petitioner does not meet its burden, the Tax Tribunal must determine the property’s true cash value under the approach that most accurately reflects the value of the property.⁷ The Tribunal may consider multiple approaches to determine a property’s true cash value, and should correlate, reconcile, and weigh the values to determine a final estimate of the property’s value.⁸ Generally, competent and substantial evidence supports the Tribunal’s determination if it is within the range of the evidence advanced by the parties.⁹

C. APPLYING THE STANDARDS

The property owners assert that the evidence did not support the Tax Tribunal’s determination of the property’s true cash value for tax years 2009 and 2010 because it failed to take into account the effect of the property’s deferred maintenance on its value. We disagree.

The credibility of the witnesses is a matter for the Tax Tribunal to determine, and we will not interfere with the Tax Tribunal’s determinations of the weight to assign to the evidence.¹⁰ Here, the parties stipulated that the property suffered from deferred maintenance. As explained by the Tax Tribunal in its denial of the property owners’ motion for reconsideration, the Tax

² Const 1963, art 6, § 28; *Michigan Props, LLC*, 491 Mich at 527.

³ *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994); *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

⁴ Const 1963, art 9, § 3.

⁵ MCL 211.27(1).

⁶ MCL 205.737(3); *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998).

⁷ *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011); *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁸ *Meadowlanes Dividend Housing Ass’n*, 437 Mich at 484-486.

⁹ *President Inn Props, LLC*, 291 Mich App at 641-642.

¹⁰ *Id.* at 636; *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App at 404, 407.

Tribunal *did* account for the property's deferred maintenance. It rejected as unreliable Kirkey's cost-to-cure approach to account for the deferred maintenance. It then found that Groves's sales comparison approach considered the property's condition, including deferred maintenance, and relied on that approach to arrive at the property's true cash value.

Thus, the Tax Tribunal did not fail to account for the deferred maintenance. Rather, it relied on Grand Blanc Township's method to do so after rejecting the property owners' proposed method as incredible and inappropriate. We will not interfere with the Tax Tribunal's decision regarding the weight of the evidence in this case. We conclude that the Tax Tribunal's determination of the property's true cash value was appropriate because it was within the range of the evidence.¹¹

We affirm.

/s/ Amy Ronayne Krause
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck

¹¹ See *President Inn Properties, LLC*, 291 Mich App at 641-642.